

UPDATED INFORMATIVE DIGEST

July 8, 2004

The original Informative Digest is hereby incorporated by reference.

On October 3, 2003, the Department issued a Notice of Proposed Rulemaking for the HOME Investment Partnerships Program, California Code of Regulations Title 25, Division 1, Chapter 7, commencing with Section 8201. The Department made post hearing changes to the originally proposed regulations as a result of comments received during the 45 day comment period. These changes (shown as double underlining and double strikethrough) were made available to the public from May 26, 2004 through June 11, 2004.

The following is a summary of those changes notice May 26, 2004:

- In Section 8201(c), the definition for “Award letter” was reworded to emphasize the letter is a “conditional reservation”. This revision was prompted by internal HCD discussion rather than public comment.
- In Section 8201(m), the language is revised to 1) allow a CHDO to apply for a FTHB program for single family infill, 2) require the rehabilitation work to be completed after transfer of ownership interest, and 3) replace the use of the word “lots” with “site/s”.
- In Section 8201(n), the activity name is revised to “FTHB Project” and the descriptor “subdivision” was removed. This revision was prompted by internal HCD discussion rather than public comment.
- In Section 8201(x), the activity name is revised to “rental rehabilitation and/or acquisition project”, the definition reworded, and moved to 8201(bb). This name revision was prompted by internal HCD discussion rather than public comment.
- In Section 8201(z), the activity name is revised to “owner-occupied rehabilitation programs” and moved to 8201(x). This revision was prompted by internal HCD discussion rather than public comment.
- In Section 8201(aa), the language stating “Activities consisting solely of rental acquisition are not eligible for this activity” is rescinded to allow “acquisition only” projects under this activity. The activity name is changed to “rental rehabilitation and/or acquisition program”. This name revision was prompted by internal HCD discussion rather than public comment.

- In Section 8201(bb), the activity name is revised to “rental new construction projects” and moved to 8201(z). This revision was prompted by internal HCD discussion rather than public comment.
- In Section 8204(a)(1)(D), minor format changes were made.
- In Section 8204(a)(1)(D)(iii) the text was revised to clarify that a “self-certification” is required.
- In Section 8204(a)(1)(D)(iv), the text was revised to clarify that a “self-certification” is required.
- In Section 8204(a)(2), minor format changes were made.
- In Section 8204(a)(2)(C)(ii), the text was revised to clarify that a “self-certification” is required.
- In Section 8204(a)(2)(C)(iii), the text was revised to clarify that a “self-certification” is required.
- In Section 8204.1(b)(3)(E), the requirement was removed to clarify the requirement is not required to be met solely in the Bylaws and moved as a general item under 8204.1(b)(12).
- In Section 8204.1(b)(3)(F), the text was revised for minor rewording and renumbered (E).
- In Section 8204.1(b)(11)(ii), a new provision is added requiring CHDO’s to file a business plan if more than five years has passed since the last certification has expired.
- In Section 8204.1(b)(11)(iii) and (iv), the requirements for a business plan when a CHDO is applying for a new activity or for a new geographical area is rescinded.
- In Section 8204.1(b)(12), this section was moved from 8204.1(b)(3)(E) to indicate the requirement is not required solely in the Bylaws and revised to reflect the requirement may be evidenced by the Articles of Incorporation, the Charter or Resolution, or Bylaws.
- In Section 8204.1(b)(14), the text was revised to clarify that a “self-certification” is required.
- In Section 8204.1(g), is revised to require that CHDOs submit a self certification confirming certification eligibility with their HOME application and HCD may require documentation to substantiate certification status.

- In Section 8205(a)(2), the activity name is revised to “owner-occupied rehabilitation programs”. This revision was prompted by internal HCD discussion rather than public comment.
- In Section 8205(a)(3), the activity name is revised to “rental rehabilitation and/or acquisition program.” This revision was prompted by internal HCD discussion rather than public comment.
- In Section 8205(a)(5), the activity name is revised to “rental new construction projects”. This revision was prompted by internal HCD discussion rather than public comment.
- In Section 8205(a)(6), the activity name is revised to “rental rehabilitation and/or acquisition project”. This revision was prompted by internal HCD discussion rather than public comment.
- In Section 8205(a)(7), the activity name is revised to “first-time homebuyer project”. This revision was prompted by internal HCD discussion rather than public comment.
- In Section 8205(b)(1)(A), the text is revised to clarify that this section pertains to “Loans financed from the CHDO Set-aside” per 24 CFR 92.300(a)(1).
- In Section 8205(b)(1)(A)(iii), the text is revised to include a provision that loans be made at the Applicable Federal Rate (AFR), if necessary, for LTC projects.
- In Section 8205(b)(1)(B), the text is revised to clarify that (B) addresses provisions for “Loans financed from CHDO proceeds” pursuant to Section 8206.1(c).
- In Section 8206.1, the header is modified to indicate that this section also covers “Proceeds from the investment of HOME funds”.
- In Section 8206.1(a), the text is being revised to indicate that: ...“rental housing” that does not comply with affordability requirements for a required period, the HOME funds shall be repaid to HCD.
- In Section 8206.1(b)(3), a provision was added that allows contractors to request HCD approval for resale on limited equity forms of ownership (like cooperatives and community land trust).
- In Section 8206.1(c)(1), the text is revised to clarify “all program requirements” as meaning adherence to program requirements and deadlines in four preceding State HOME contracts including CHDO certification and application requirements identified in Sections 8204 and 8204.1 and federal overlays.
- In Section: 8206.1(c)(5), HCD rescinded this subsection and the capacity requirement for three senior staff with at least three-years tenure.

- In Section 8207(a)(2), the requirement for a \$5,000 per unit minimum is rescinded.
- In Section 8207(a)(3)(B)(ii), the text is modified to remove the requirement that a specific index is to be used to evaluate whether the proposed interest rate is a reasonable market rate. Instead, the index will be established in the NOFA.
- In Section 8208(a), the affordability table is revised to clarify the overlap in the amount of funds that apply to each category. This revision was a result of internal HCD discussion rather than public comment.
- In Section 8210(f), citation to 8217 removed, as disencumbrance is no longer required per 8217.
- In Section 8211(c)(3) and (4), citations in these sections were updated.
- In Section 8212(a)(2), the text is reworded for clarity to read: “the application proposes at least one activity but no more than two activities. The proposed activities and the specific use of funds must be eligible pursuant to In Section 8205 and 8210(c).”
- In Section 8212(a)(4) the text is modified to include language that indicates the amount of funds requested that may not exceed the NOFA limits include limit increases that may be allowed pursuant to Section 8217.
- In Section 8212(a)(6), the text was modified to remove language that may conflict with the site control requirements in Section 8303 of the Uniform Multifamily Regulations.
- In Section 8212(c)(1)(A), (A)(1) and (A)(2), the text is revised to clarify that the rating requirements are those specified in this section on prior years contracts as specified in the NOFA. Additionally, subsection (1)(A)(2) clarifies that the monitoring issues identified by the Department in the last 5 years will be reviewed.
- In Section 8212(c)(1)(B), the requirement is revised to allow prior experience of the applicant to be measured by implementation of “Local” affordable housing or community development programs in addition to HOME, State and federal programs.
- In Section 8212(c)(2), the text is revised to clarify that the NOFA will identify “the community need factors that apply to each activity and required source and who will be required to provide the source documentation.
- In Section 8212(c)(3)(A), the text is revised to remove the requirement to use the 203(b) limits when determining the feasibility of a FTHB program by the availability of affordable units.

- In Section 8212(d)(1)(A), (A)(1) and (A)(2) the text is revised to clarify that the rating requirements are those specified in this section on prior years contracts as specified in the NOFA. Additionally, (A)(2) addresses that the monitoring issues identified by the Department in the last 5 years will be reviewed.
- In Section 8212(d)(1)(B), the requirement is revised to allow prior experience of the applicant to be measured by development of of “Local” affordable housing or community development projects in addition to HOME, State and federal projects.
- In Section 8212(d)(1)(C), the requirement for prior experience of the Development team is clarified that the development of the project/s shall be “in a manner consistent with the applicable funding source”.
- In Section 8212(d)(2), the text is revised to clarify that the NOFA will identify “the community need factors that apply to each activity and required source and who will be required to provide the source documentation.
- In Section 8212(d)(3), the text is revised to delete the rating based on the per unit construction costs being within 10% average unit construction costs as reported by DOF. The revised text also deletes this rating as a benchmark when determining points based on the greatest number of HOME assisted units. Lastly, HOME is also revising this section to look at the greatest “percent” of HOME assisted units instead of “number”.
- In Section 8212(d)(4), text is added to clarify that the point values for each Readiness sub-factor will be identified in the NOFA.
- In Section 8217, the heading is revised to read “Deadlines and Expenditure Milestones”.
- In Section 8217(b)(1)(A), the requirement for disencumbrance of funds if the finance deadline is removed. The text is further modified to clarify that documentation for all necessary permanent project financing, including the permanent financing for the required period of affordability, are required.
- In Section 8217(b)(2), the text requiring the disencumbrance of funds whenever any deadline is missed is rescinded.
- In Section 8217(b)(2), a new provision allows for a performance penalty for the missing of any one deadline, and
- In Section 8217(b)(3), a new provision is added that states: for 3 missed deadlines the applicant will be (A) ineligible to apply for additional home funds for a new project until the project with the missed deadlines is complete, a notice of completion has been filed, occupancy is obtained and all expenditures have been

made and all necessary HOME funds have been drawn; and (B) the Contractor will receive a performance penalty in the next project application submitted.

- In Section 8217(c), the header is modified to “Program Milestones”.
- In Section 8217(c)(1)(A), is being revised to increase the grant period to 30 months with milestones due at the 12th and 18th month requiring 20%, 50% and 95% for the final.
- Section 8217(c)(1)(ii), new text is being added to indicate that reported Program Income expenditures for the same activity will be used in the calculation of disbursements in determining if the milestones are met except for the final.
- In Section 8217(c)(2-4), HCD is rescinding the language proposed that provided for reduction in funding for missed milestones.
- In Section 8217(c)(4), language is added to provide an increase to the program funding limit based on an applicants prior HOME performance and criteria specified in the NOFA.
- In Section 8217(d), language is being added to allow an exception to missed project and program requirements of section 8217 when the violation was clearly outside of the control of the Contractor. This provision will not apply to Subsection 8217(b)(3)(A).

On May 26, 2003, the Department issued a 15 Day Notice of Proposed Final Text of Amendments to Regulations for the HOME Investment Partnerships Program. The Department made post hearing changes to the originally proposed regulations as a result of internal HCD discussion rather than public comments received during the first 15 day comment period. These changes (shown in italics and double underlining and double strikethrough) were made available to the public from May 26, 2004 through June 11, 2004.

The following is a summary of those changes notice June 14, 2004:

- In Section 8205(b)(A)(iii), the text was revised from “Loans made by CHDO’s for rental projects” to “Loans to rental projects” ... Loans financed from the CHDO Set aside are always made by the Department and generally to the Limited Partnership on CHDO rental projects. This section had previously been inadvertently modified in error. This revision was prompted by internal HCD discussion rather than public comment.
- In section 8206.1(b)(4), the text was revised to correct a typo in the second sentence changing “fro” to “from” and a typo in the third sentence “f Failure” to “failure”.

- In Section 8211(c)(10), the requirement was revised to add the word “local”. The change is necessary to allow the State to request information on local along with the state and other federal housing or community development programs to make a determination on the rating and ranking criteria identified in section 8212(c)(1)(B) and 8212(d)(1)(B). This revision was prompted by internal HCD discussion rather than public comment.
- In Section 8212(a)(1), the citation “8204.1” was added to the text. This citation was previously added to the corresponding application requirement section 8211(c)(3) but not included in the rating and ranking criteria in section 8212. This revision was prompted by internal HCD discussion rather than public comment.

On June 14, 2004, the Department issued a 15 Day Notice of Proposed Final Text of Amendments to Regulations for the HOME Investment Partnerships Program. The Department made non regulatory post hearing changes to the originally proposed regulations as a result of internal HCD review rather than public comments received during the second 15 day comment period. These changes (shown in italics, shaded, double underlining and double strikethrough) were made in the final revision to Text of Regulations the final Text of Regulations included in the regulatory record.

The following is a summary of those changes made to the Final Text:

- In Section 8205(b)(1)(B)(ii), the last sentence in the proposed text “All rental rehabilitation project loans shall be amortizing....” has been rescinded. Because this sentence does not affect or influence any of the other changes proposed in this regulation package for the reasons specified in the FSOR, the deletion of the proposed sentence has not been circulated for 15 day comments.
- In Section 8205(b)(1)(C)(ii), the last sentence in the proposed text “All rental rehabilitation project loans shall be amortizing....” has been rescinded. Because this sentence does not affect or influence any of the other changes proposed in this regulation package for the reasons specified in the FSOR, the deletion of the proposed sentence has not been circulated for 15 day comments.
- In Section 8210(h), the section number was changed to (g). The other subsections were appropriately identified to be changed e.g., (g) to (f) but (h) was inadvertently missed.
- In Section 8212(c)(1)(A), subsections (1) and (2) has been revised to (i) and (ii) to correct the numbering system so that it would parallel the rest of the regulation text.

- Section 8212(d)(1)(A), subsections (1) and (2) has been revised to (i) and (ii) to correct the numbering system so that it would parallel the rest of the regulation text.
- In Section 8217(c)(3), a period was added in the 4th line between “....entered into” and “Contracts awarded HOME funds.....”